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## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Approve Minutes  
a) August 16, 2006 (Regular Meeting)  
b) September 19, 2006 (Shirtsleeve Session)

**MEETING DATE:** October 18, 2006

**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** That the City Council approve the following minutes as prepared:  
a) August 16, 2006 (Regular Meeting)  
b) September 19, 2006 (Shirtsleeve Session)

**BACKGROUND INFORMATION:** Attached are copies of the subject minutes, marked Exhibits A through B.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** None required.

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Jennifer M. Perrin  
Interim City Clerk

JMP  
Attachments

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**APPROVED:** \_\_\_\_\_  
Blair King, City Manager

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, AUGUST 16, 2006**

**C-1     CALL TO ORDER / ROLL CALL**

The City Council Closed Session meeting of August 16, 2006, was called to order by Mayor Hitchcock at 5:39 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock (arrived at 5:41 p.m.)

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

**C-2     ANNOUNCEMENT OF CLOSED SESSION**

- a) Actual litigation: Government Code §54956.9(a); one case, City of Lodi v. Michael C. Donovan, an individual; Envision Law Group, LLP, et al., San Francisco, Superior Court, Case No. CGC-05-441976
- b) Actual litigation: Government Code §54956.9(a); one case; Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al., Superior Court, County of San Francisco, Case No. 323658
- c) Actual Litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al., United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- d) Actual litigation: Government Code §54956.9(a); one case; Peter Rose et al. v. the City of Lodi, et al.; United States District Court, Eastern District of California, Case No. CIV.S-05-02229
- e) Actual Litigation: Government Code §54956.9(a); one case; County of San Joaquin v. City of Stockton et al., San Joaquin County Superior Court, Case No. CV029651
- f) Conference with legal counsel – initiation of litigation; Government Code §54956.9(c); one case

**C-3     ADJOURN TO CLOSED SESSION**

At 5:39 p.m., Mayor Pro Tempore Johnson adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:26 p.m.

**C-4     RETURN TO OPEN SESSION / DISCLOSURE OF ACTION**

At 7:00 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Schwabauer disclosed that Items C-2 (a), (b), (c), (d), (e), and (f) were discussion and direction only; no action was taken.

**A.     CALL TO ORDER / ROLL CALL**

The Regular City Council meeting of August 16, 2006, was called to order by Mayor Hitchcock at 7:00 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

**B.     INVOCATION**

The invocation was given by Ken Owen, Christian Community Concerns.

**C.     PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 (a) Mayor Hitchcock presented Community Improvement Awards to the owners of the following properties for their efforts in improving and maintaining the appearances of their neighborhood:

- **800 S. Central** – Douglas Hieb
- **406 Maple** – Mohammad & Khalida Perviz
- **411 Maple** – Enrique & C R Leyva
- **420 Maple** – Cecelia Guzman
- **432 Maple** – Ignacio & Rosie Ortiz
- **435 Maple** – Maria de La Luz Gomez

D-2 (a) Mayor Hitchcock presented a proclamation to Stephanie Messmer, AmeriCorps Literacy volunteer, proclaiming August 24, 2006, as "Read for the Record Day" in the City of Lodi. Ms. Messmer explained that the purpose of this program is to break the world record for the most children read to on one day reading the same book, "The Little Engine That Could." Two events will take place in Lodi on August 24 – the first one at the Lodi Public Library from 10:00 a.m. to noon, and the second at the historic train station from 5:00 to 6:30 p.m. Anyone interested in volunteering was encouraged to contact the Lodi Public Library at 333-5534.

D-3 Presentations – None

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E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Beckman, Mounce second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

- E-1 Claims were approved in the amount of \$6,508,874.99.
- E-2 The minutes of June 21, 2006 (Regular Meeting), July 18, 2006 (Shirtsleeve Session), July 25, 2006 (Shirtsleeve Session), and August 9, 2006 (Special Meeting) were approved as written.
- E-3 Received the quarterly report of purchases between \$5,000 and \$20,000.
- E-4 Approved the request for proposals for benefits administration consultant/broker services for distribution to interested firms.
- E-5 "Adopt resolution awarding contract for upgrades to Carnegie Forum audio/visual presentation equipment to Anderson Audio Visual, of Sacramento (\$18,713.75)" was **removed from the Consent Calendar and discussed and acted upon following the "Comments by the public on non-agenda items" segment of the agenda.**
- E-6 "Adopt resolution awarding contract for Well 27 Well Drilling at 2360 West Century Boulevard (DeBenedetti Park) to Zim Industries, Inc., of Fresno (\$208,700)" was **removed from the Consent Calendar and discussed and acted upon following the "Comments by the public on non-agenda items" segment of the agenda.**
- E-7 Adopted Resolution No. 2006-154 awarding the contract for Church Street and Sacramento Street Overlays 2006 Project to George Reed, Inc., of Lodi, in the amount of \$374,791.
- E-8 Adopted Resolution No. 2006-155 approving additional technical services with Treadwell & Rollo, Inc., and appropriating funds in the amount of \$235,000.
- E-9 Adopted Resolution No. 2006-156 accepting improvements under the "Elevated Water Tank Recoating Project" contract.

- E-10 Adopted Resolution No. 2006-157 accepting street improvements along Harney Lane and Cherokee Lane and 24-foot wide public lanes within The Villas, Tract No. 3400.
- E-11 Adopted Resolution No. 2006-158 accepting the improvements at Vintner's Square, Parcel Map No. 002P008 at the corner of Lower Sacramento Road and Kettleman Lane.
- E-12 "Adopt resolution authorizing the City Manager to execute a professional services agreement with Wenell Mattheis Bowe for design services for the Municipal Service Center transit vehicle maintenance facility (not to exceed \$186,700)" was **removed from the Consent Calendar and discussed and acted upon following the "Comments by the public on non-agenda items" segment of the agenda.**
- E-13 Authorized the City Manager to terminate the lease option agreement with Lodi City Center 12 for the retail space in the Lodi Station Parking Structure.
- E-14 Set public hearing for August 30, 2006, to consider certifying an Environmental Impact Report and approving General Plan amendment, zone change, development agreement, and annexation to allow development of a single tenant office building (approximately 200,000 square feet) on 20 acres, general retail commercial uses on 40 acres, 1,084 dwelling units of various densities, and associated public and quasi-public facilities (Reynolds Ranch project) on a total of 220 acres located on the south side of Harney Lane between State Highway 99 and the Union Pacific Railroad to the west (Applicant: San Joaquin Valley Land Company, File #s 06-GM-01, 06-EIR-01, 06-AX-01).
- E-15 "Set public hearing for September 6, 2006, to consider two appeals of the Planning Commission's site and architectural plan approval for the Vineyard Christian Middle School located at 2301 West Lodi Avenue (Appellants: Vineyard Christian Middle School and David Johnson et al., regarding File #06-SP-06)" was **removed from the Consent Calendar and discussed and acted upon following the "Comments by the public on non-agenda items" segment of the agenda.**

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#### ACTION ON ITEMS REMOVED FROM THE CONSENT CALENDAR

Mayor Hitchcock suggested moving the pulled items to the end of the agenda due to the fact that a number of citizens were here to discuss Item K-1, to which Council Member Beckman called for point of order and stated that he believed a motion was required to rearrange the agenda. In order to allow the City Attorney adequate time to locate the subject rule to address this issue, Mayor Hitchcock proceeded to the "Comments by the public on non-agenda items" segment of the agenda.

#### F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Troy Wagers expressed concern regarding the proposed Delta College satellite campus along Victor Road and the probability that Delta College would sell half of the land to developers, which could potentially bring in big box stores. Mr. Wagers stated that he was a fourth generation Lodian and did not want to see Lodi evolve into another Elk Grove. Lodi has some of the best farm land, a great micro-climate, and is gearing up to become a destination for wine and tourism. He was opposed to tearing into prime agricultural land to construct a building, particularly if half of it will be sold to developers. The project was poorly planned, and he believed that the taxpayers should be informed of how much was paid for the land and how much the City will pay for the infrastructure associated with this project.
- Toni Miller also expressed concern regarding the proposed location for the Delta College satellite campus and was opposed to utilizing prime farm land for this type of development. The founding fathers envisioned Lodi as a farming community, and she believed that Lodi was fast becoming a mini Stockton. Lodi's crime rate has increased with this growth, and Lodi has steadily lost its reputation. This community should be one that draws in visitors for its wine and cherry industry. Ms. Miller stated that she lives five miles outside of Lodi, yet this City Council is making decisions that affect her property. She stated that the water level near her property has dropped because of Lodi's utilization of the water. The traffic issues created by Delta

College will negatively impact the area as the school would be accessed from 6:30 a.m. until 10:00 p.m. using Victor Road, Turner Road, Cluff Avenue, Guild Avenue, Tecklenburg Lane, and Kettleman Lane, all of which are two-lane roads. Ms. Miller expressed her willingness to meet with City staff to discuss alternate sites for the Delta College campus.

- Mary Hoff reported that the Delta College Board of Trustees voted at its meeting last night, 5 to 2, to postpone the vote for 30 days on the proposed Victor Road site for the satellite campus in Lodi. Ms. Hoff stated that a petition is being circulated that reads, *"Delta College is considering purchasing 168 acres on Highway 12/Victor Road and Kennison Lane using educational bond funds. The College administration has indicated that they intend to sell roughly half the property to commercial developers to make enough money to build the campus buildings and after they have successfully converted this Ag-40 zoned land to commercial zoning. We, the undersigned, are opposed to the use of educational bond funds for the purpose of purchasing property on Kennison Land and Highway 12/Victor Road for any purpose other than education. We are opposed to Delta using its educational status to contravene agricultural zoning to allow commercial development"* (filed). To date, over 500 signatures have been collected. The Delta College Board of Trustees also received an email from the Delta Sierra Club (filed) stating that it will do a thorough environmental review in conjunction with the Environment Impact Report. Ms. Hoff pointed out that other sites were considered, three of which were on the west side, that had the approximate acreage needed by Delta College, as well as easy access, infrastructure, and development already occurring in those areas. Other suggestions have been made to incorporate Delta College into the downtown or east side of Lodi, including the use of vacant buildings and empty lots along Main, Sacramento, Pine, and Elm Streets. Ms. Hoff stated that a culinary school could go into the downtown restaurant area, or a nursing program could be implemented at one of the Lodi Memorial Hospital facilities. She stated that she was in favor of Delta College locating in Lodi; however, she was strongly opposed to the east Victor Road site for this campus.

In response to Mayor Hitchcock, Mr. King reported that Lodi suggested two sites to the Delta College Board: one along Highway 99 north of the Mokelumne River and the other along Victor Road. Delta College analyzed a total of eight sites, ultimately selected the Victor Road location, and subsequently entered into a six-month due diligence period with the City. There is currently no action pending before the City Council; although, there may be in the future depending upon the actions taken by the Delta College Board of Trustees.

- David Nielsen requested information on what the specific plan and timeline was for the City to assist the neighbors of East Locust Street before they proceed to sue unresponsive landlords in Small Claims Court. He has been working with the Police Department and Code Enforcement to resolve the many issues; however, it has been 2 months and 14 days since he first brought the neighborhood concerns to the attention of the City Council.

Mr. King suggested that a Shirtsleeve Session be scheduled to further discuss the status of this matter. Community Improvement Manager, Joseph Wood, has been in contact with individual property owners on a case-by-case basis and recommendations have been made with regard to physical changes to properties, businesses practices, and in some cases the need for an on-site manager. The Police Department has committed to overtime funds to provide saturated enforcement in the area and will continue to do so.

Mayor Pro Tempore Johnson believed that litigation was an option available to the residents outside of the City's purview and he encouraged them to proceed. He further encouraged City staff to provide the necessary documentation and support to the neighbors to assist in this effort.

- Eileen St. Yves announced that the Lodi Improvement Committee will hold a meeting on September 5 to discuss these issues and will provide information to assist the community. Further, Ms. St. Yves reported that new California legislation would allow sexual offenders to live on property, against which property owners could not contest. New legislation would also extend the eviction notice to 60 days, which would make it much more difficult for the removal of a tenant.

- Virginia Snyder stated that in 1993 former City Attorney, Bob McNatt, assisted the East Side Improvement Committee in drafting a plan that was legal for neighbors to sue property owners in Small Claims Court and allow them to remove tenants who were into drugs, prostitution, and gangs. She urged Council to give the neighbors of East Locust Street every bit of support, including legal advice.

#### ACTION ON ITEMS REMOVED FROM THE CONSENT CALENDAR

City Attorney Schwabauer stated that Resolution 2006-31 regarding conduct of Council meetings offers three rules that could apply to the placement of pulled Consent Calendar items: 1) Call for Orders of the Day – any member may demand that the agenda be followed in the order stated therein, no second is required, and the chair must comply unless the Council, by majority vote, sets aside the orders of the day; 2) Point of Order – any member may require the chair to enforce the rules of the Council by raising a point of order, the point of order shall be ruled upon by the chair; and 3) Appeal – should any member be dissatisfied with a ruling from the chair, he/she may move to appeal the ruling to the full Council, the motion must be seconded to put it before the Council, the majority in the negative or a tie vote sustains the ruling of the chair, the motion is debatable and the chair may participate in the debate.

Mayor Hitchcock suggested moving forward with the pulled Consent Calendar items and that consideration be given to those who wished to speak on Item K-1.

- E-5 “Adopt resolution awarding contract for upgrades to Carnegie Forum audio/visual presentation equipment to Anderson Audio Visual, of Sacramento (\$18,713.75)”

Mayor Pro Tempore Johnson questioned how much of this system was needed, to which Mr. King responded that he believed this proposal was a minimum. The tools used to communicate with Council and the public is poor, antiquated, and is not guaranteed to work from one presentation to another. One of the proposed pieces of equipment would project images from the overhead screen directly to the cable system so viewers at home could view the information. Additionally, a document character generator would provide staff and public the ability to display handouts, photographs, maps, etc. on the overhead screen for all to view. Currently, the City is using wireless technology, which is not reliable, and staff is proposing to hard wire the equipment for better dependability.

In response to Mr. Johnson regarding add-on costs, Deputy City Manager Krueger stated that representatives from Anderson Audio Visual recommended a separate sound system to accommodate the presentation equipment as the current sound system is inadequate. He was unsure on what the cost would be for a future upgrade to the City's sound system, but he believed the expenditures related to the audio/visual equipment was money well spent and should not be deferred.

Mayor Hitchcock stated that she has received complaints from viewers who say they cannot hear many of the presenters, to which Mayor Pro Tempore Johnson countered that the same holds true for televised meetings of the San Joaquin County Board of Supervisors and the Lodi Unified School District Board of Trustees.

Council Member Hansen expressed support for this purchase, particularly because it allows the home viewer to see the information presented on the overhead.

#### MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, adopted Resolution No. 2006-159 awarding the contract for upgrades to Carnegie Forum audio/visual presentation equipment to Anderson Audio Visual, of Sacramento, in the amount of \$18,713.75. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, and Mayor Hitchcock

Noes: Council Members – Johnson and Mounce

Absent: Council Members – None

- E-6 "Adopt resolution awarding contract for Well 27 Well Drilling at 2360 West Century Boulevard (DeBenedetti Park) to Zim Industries, Inc., of Fresno (\$208,700)"

Council Member Mounce questioned why this project was moving forward before any progress has been made on DeBenedetti Park and where the remaining funds would come from to pay for the building of this park.

Public Works Director Prima responded that the City's water supply system is handled entirely by wells. The City requires a number of wells to supply peak demands throughout the City and is presently two wells short. Currently, there are two wells in development: one at DeBenedetti Park and the other at Kettleman Lane, across from Lowe's. Wells are typically installed prior to park improvements.

Council Member Mounce questioned if this well would support development that has already occurred in this section of town, to which Mr. Prima replied in the affirmative and added that it would support the entire City as well.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Johnson, Hansen second, adopted Resolution No. 2006-160 awarding the contract for Well 27 Well Drilling at 2360 West Century Boulevard (DeBenedetti Park) to Zim Industries, Inc., of Fresno, in the amount of \$208,700. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock

Noes: Council Members – Mounce

Absent: Council Members – None

- E-12 "Adopt resolution authorizing the City Manager to execute a professional services agreement with Wenell Mattheis Bowe for design services for the Municipal Service Center transit vehicle maintenance facility (not to exceed \$186,700)"

Mayor Pro Tempore Johnson expressed concern that this professional services agreement was not put out to bid and stated that the City should consider proposals from other architects. He pointed out that Wenell Mattheis Bowe would be subcontracting a portion of the work, which indicates that there are other firms who specialize in this type of design work.

Council Members Mounce and Beckman and Mayor Hitchcock agreed with this comment and requested further explanation.

City Manager King responded that staff did not solicit beyond two firms and he believed there may be a time constraint on this matter. He requested that staff be given the opportunity to discuss this issue during an upcoming break and make a recommendation to Council at a later point during the meeting, to which Mayor Hitchcock concurred.

- E-15 "Set public hearing for September 6, 2006, to consider two appeals of the Planning Commission's site and architectural plan approval for the Vineyard Christian Middle School located at 2301 West Lodi Avenue (Appellants: Vineyard Christian Middle School and David Johnson et al., regarding File #06-SP-06)"

Council Member Mounce requested that Council set this public hearing for September 20, rather than September 6, as she will be representing the City at the League of California Cities annual conference. With Mayor Hitchcock abstaining from this matter, she believed it was important to have the remaining four Council Members present at this hearing.

Council Member Hansen stated that he was reluctant to put off this matter without first hearing from the appellants. He was also concerned that there was a timing issue regarding the opening of the school.

Mayor Pro Tempore Johnson stated that he may be out of state on September 20, which could further delay the hearing to October. He agreed that timing is of the essence to the participants.

Council Member Beckman questioned at what point would the appeals be exhausted and the applicants be able to move forward on this project, to which City Attorney Schwabauer responded that in this case the project was appealed twice. The project initially went before the Site Plan and Architectural Review Committee (SPARC) for approval; next to the Planning Commission; and then to the City Council as an appeal on the use permit. The use permit contained a number of conditions, including the school entrance location and the layout and number of temporary buildings, which were subsequently modified. The school was then required to return to SPARC to seek a change to its conditional use permit, which went again before the Planning Commission and was appealed to the City Council. Assuming the school receives its conditional use permit at this hearing, this issue would end unless further modifications to the plan are requested.

Council Member Beckman stated that he believed it was important to have four Council Members present at the hearing; however, he was not in favor of delaying this matter until October.

Council Member Mounce stated that, if the hearing is not postponed to September 20, she would be forced to cancel her attendance at the League conference in order to participate.

PUBLIC COMMENTS:

- David Johnson, appellant representing the neighbors surrounding the proposed school, stated that this has been on-going since February 2006. The neighbors believed the issues had been resolved; however, the conditions were not met by the school, which prompted the appeals. He believed that both the neighborhood and the school deserved to have all four Council Members present at the hearing to consider the concerns and take action on this last appeal. He stated that the school's plans were submitted to SPARC one hour before its meeting, which resulted in a number of errors, and he believed this matter should not be rapidly pushed through.
- Pat Patrick, speaking as a parent, stated that the Planning Commission voted at its last meeting, 4 to 3, to move the project forward. The appeal from the school was in regard to the conditions placed on the erection of a fence around the school and whether it could open while the fence was being constructed. As a parent, he would like to have his child in the school as soon as possible.

Mayor Hitchcock suggested a compromise of setting a special meeting to conduct the public hearing.

Mayor Pro Tempore Johnson stated that he would like the hearing to be limited to the specifics of this appeal and not repeat the points that were raised at the last hearing, to which Mr. Schwabauer stated that the school's appeal is in regard to one issue; however, the appeal from the neighborhood is over the entire project. He pointed out that Council could set time limits and rules for debate as a means to move along the public hearing.

MOTION:

Council Member Beckman made a motion, Hansen second, to set public hearing for September 6, 2006, to consider two appeals of the Planning Commission's site and architectural plan approval for the Vineyard Christian Middle School located at 2301 West Lodi Avenue (Appellants: Vineyard Christian Middle School and David Johnson et al., regarding File #06-SP-06).

DISCUSSION:

Council Member Mounce expressed her disappointment and added she would not expect others to postpone their City business.



Mayor Hitchcock stated she would not support the motion as she believed Council needs to respect requests from Council Members, as well as from appellants, in setting a date that works well.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, and Johnson

Noes: Council Members – Mounce and Mayor Hitchcock

Absent: Council Members – None

G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Beckman questioned if the Mayor's vote on the setting of the public hearing for the Vineyard Christian Middle School would affect the final vote due to the fact that she had to recuse herself previously, to which Mr. Schwabauer replied in the negative. Further, Mr. Beckman stated that he was pleased to hear that the Greenbelt Task Force is considering an AL5-type of zoning.
- Council Member Hansen stated that the San Joaquin Council of Governments (SJCOG) had a special meeting last week regarding the San Joaquin Valley Blueprint Planning Process, which would develop a cohesive regional framework involving integration of transportation, housing, land use, economic development, and environment to produce a preferred growth scenario through the year 2050. SJCOG received a \$4 million grant from the State of California to move forward with his plan, and there will be a community outreach and public involvement process. Further, Mr. Hansen reported that he, along with Robert Gross, conductor of the Lodi Community Band, and Bill Tubbs, a bagpiper from the 91<sup>st</sup> Division of the U.S. Army Reserve, will appear tomorrow on Good Day Sacramento on Channel 10 to promote the Lodi Community Band the Centennial celebration events occurring this weekend.
- Mayor Hitchcock reported on the Greenbelt Task Force meeting and congratulated Bruce Fry for bringing together the property owners in the area to discuss possible solutions. There is not complete agreement from everyone; however, there has been a compromise among the property owners, and the proposal would merge well with the City's progress toward the sphere of influence. The Task Force is looking at the plan that was brought forward by the homeowners and farmers in the area and is working together to create a more specific plan for the sphere of influence. The next meeting will be October 3, at which the consultants will be presenting further information on the subject.

H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

None.

I. PUBLIC HEARINGS

None.

RECESS

At 8:36 p.m. Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 8:48 p.m.

ACTION ON ITEM REMOVED FROM THE CONSENT CALENDAR

- E-12 "Adopt resolution authorizing the City Manager to execute a professional services agreement with Wenell Mattheis Bowe for design services for the Municipal Service Center transit vehicle maintenance facility (not to exceed \$186,700)" was ***pulled from the agenda.***

City Manager King stated that staff has been pleased over the years with the work performed by Wenell Mattheis Bowe (WMB) – it has been the architect of record for the Public Works yard for a number of years, is familiar with the physical conditions of the facility, and knows the staff. The money for this project is from a federal grant, and the funds must be committed by next summer. Considering the history of the City and this firm, staff believed it to be most expedient to recommend WMB for the work; however, upon further reflection, staff is recommending that this item be pulled from the agenda in order for staff to solicit proposals from local architectural firms.

J. COMMUNICATIONS

J-1 Claims filed against the City of Lodi – None

J-2 Appointments – None

J-3 Miscellaneous – None

K. REGULAR CALENDAR

K-1 “Provide direction with regard to a request from Mayor Hitchcock regarding consideration of a development moratorium”

City Manager King reported that there are two options pursuant to the Government Code and Land Use and Planning Law that would allow Council to impose a growth moratorium, both of which require a four-fifths vote. The first is that Council may immediately take action as an urgency measure to prohibit, for 45-days, the approval of any new development applications. Following the 45-day period, the Council would be required to hold a noticed public hearing, after which it could approve findings for protecting the public health, safety, and welfare and extend the moratorium for 10 months and 15 days. The alternative is that Council could call for a public hearing on a proposed 45-day interim ordinance to prohibit new development. Following the hearing, Council could adopt the ordinance, along with the findings, and that ordinance may then be extended for 22 months and 15 days. Two years is the longest period that a moratorium of this type could stay in place.

City Attorney Schwabauer added that, should Council take this action tonight, it would need to make findings that the public health, safety, and welfare require this action; otherwise, Council could direct staff to return at a public hearing with a proposal for the basis of the findings.

Mayor Hitchcock stated that she believed it was in the best welfare of this community if the City put the brakes on development in order to allow staff the time to review the many growth-related issues that have come before the City. Her concern was that the City did not have its General Plan in place and highlighted the following purposes of a general plan:

- It is the foundation upon which all land use decisions are to be based.
- It is a comprehensive, informational planning guide established by State law to provide a framework for making informed decisions.
- It identifies the community's land use, circulation, environmental, economic, and social goals and policies as it relates to land use and development. Currently, the City is looking at jumping over Harney Lane into an area that is outside the City's 2007 General Plan.
- It looks at the needs of the community, i.e. how much residential, industrial, office institutional, and commercial is needed. The City is allowing developers to plan an area (i.e. south of Harney Lane) where no master planning has been done.
- It is the primary tool for guiding the future development of the City.
- A comprehensive general plan formalizes a long-term vision for the physical, economic, and social evolution of the City and outlines policies, standards, and programs to guide day-to-day decisions concerning a city's development.

- It is a long-range policy document that addresses important components to a city including land use, urban design, circulation, mobility, housing, public safety, parks, recreation, and open space.

Mayor Hitchcock stated that the City is considering pieces, rather than the whole, and she believed the City would spend \$1 million for its General Plan that would already have developments committed in the areas being planned. Citizen advisory committees guide the formulation of goals, objectives, and policies of the General Plan, and to date the City has had no community input on development south of Harney Lane. A city's general plan has been described as its constitution for conservation and development and the framework within which decisions on how to grow, provide public services and facilities, and protect and enhance the community must be made. Mayor Hitchcock stated that she believed growth was not paying for itself and the City's impact fees have not been updated. She stated that the City currently charges developers \$200,000 per acre for park land and drainage basin fees, which is unrealistic, and then turns around and purchases a park or basin for \$400,000 an acre. The State is mandating large costs for wastewater disposal, yet the City has not yet determined whether it will discharge on land or to the Delta, and the ultimate cost for this should be built into the development impact fee for wastewater. The City recently received a report that it currently had a sufficient water supply to handle new development; however, the City has no delivery system for the water supply, which means the City will continue to overdraft its groundwater and lower the water table. She believed that development gets by with paying very little and that remaining costs are passed onto citizens in increased rates. San Joaquin County canceled its tax sharing agreement with the City and created a new one that cuts the City's collection of property taxes in half. This revenue is used for on-going maintenance and operations of City services. The City has been considering a municipal services district to make up the difference; however, it is not yet in place. Development is moving at such a fast pace that the City cannot put into affect the various proposals and concepts for addressing these issues. She believed the City needs to take time to ascertain the true cost of development and apportion it to the projects so that current citizens would not be burdened with increased fees and rates to pay for this development. Mayor Hitchcock expressed concern that the Growth Management Ordinance, which sets forth priority areas, is not being followed. The area south of Harney Lane is not in the priority areas, yet the project is being propelled before others who should rightly be the next to progress.

Council Member Beckman stated that staff previously indicated that Urban Reserve is within the General Plan and that the designations within the Plan comply with the new projects. Peter Pirnejad, Planning Manager, concurred and added that, once property is designated within the General Plan, it becomes part of the Plan and can be easily modified; although, increasing the boundaries is much more involved. The Planned Residential Reserve includes language that states if the area were to be constructed or developed it would need to be re-designated with another land use designation. Mr. Beckman confirmed with Mr. Pirnejad that the City is not expanding the General Plan, that all of the currently proposed projects are within the Plan, and that the City has the authority and discretion to amend it accordingly. Further, Mr. Beckman disagreed with the Mayor's characterization that the City is advancing at a growth rate that would jeopardize the welfare of the City of Lodi. He pointed out that Lodi is the slowest growing city in San Joaquin County and may be among the bottom ten slowest growing cities in California. A recent article in The Record reported that Lodi's population grew by 185, or 0.3%, according to the State Department of Finance. He believed that Lodi is more in jeopardy of growing too slowly as the City has a 2% growth cap that it has never reached. Lastly, Mr. Beckman countered that the County tax sharing agreement actually increased Lodi's share of property tax from 10% to 20% of what the County receives.

Council Member Mounce stated that her concern regarding the current growth rate is that the City continues to discuss the housing reserve, yet the west side project is not yet underway. She concurred that the City must pass on the full cost of development to developers and not onto citizens who are bearing a large enough burden. Ms. Mounce believed that the water plan is inadequate due to the fact that there is no delivery system in place. No decision has been made on the water treatment plant or the Woodbridge Irrigation District (WID) water, and the City should not continue based on assumptions. The General Plan defines what the City should be for the next 20 years, and she expressed concern that the City does not have a plan in place. She stated that every three or four houses has a "For Sale" sign, yet more houses continue to be built. She was unsure whether a growth moratorium was the answer; however, she did support the City seriously examining new growth to ensure it was not outside of the City's future vision.

Mayor Hitchcock questioned if an Environmental Impact Report (EIR) was completed for the area south of Harney Lane, to which Mr. Pirnejad replied that, when a general plan is adopted, everything that is designated must be studied. Ms. Hitchcock believed that it was not studied and that the EIR was outside of the 2007 General Plan. She further questioned if a needs study was completed for that area, to which Mr. Pirnejad replied in the negative and added that any development that were to occur in the area would require a General Plan amendment and EIR. In regard to the comment regarding slow growth, Mayor Hitchcock agreed that Lodi has not exceeded its 2% cap; however, her concern goes beyond the actual units that are being built. The City needs a plan in place to account for an inadequate fee structure and to have in place a water delivery system. Mayor Hitchcock requested clarification from the City Manager regarding the County's tax sharing agreement, to which Mr. King stated he believed the amount was less than the current tax rate areas that are currently within the City.

Council Member Beckman clarified that the decrease is from the current average of property taxes as there are varying rates of property taxes throughout the City, depending upon what year the property was annexed into the City. The current tax sharing agreement is double what it was a few years ago. Mr. Beckman added that the new projects being developed will be required to do their own EIR.

Mayor Hitchcock reiterated that her concern was that these individual EIRs were for small, separate areas, which does not consider the entire plan and needs.

Council Member Beckman questioned whether Mayor Hitchcock believed that a general EIR, which covers a broad area, is more important than a specific EIR that deals exclusively with an individual project, to which Ms. Hitchcock stated that both are necessary.

#### COMMENTS BY THE PUBLIC:

- Jeffrey Kirst believed that a growth moratorium was unnecessary. The general plan is still in place and the Housing Element of the General Plan was updated 22 months ago with a significant amount of community input. The Growth Management Ordinance is in place; although, the City has never met the 2% growth cap. Mr. Kirst reported that in 2005 there were 265 single-family housing permits issued; for 2006 year to date, only 42 have been issued. He believed that the development community is paying its fair share and stated that the Council now regularly updates those fees, more so than it had in the past. The consequences to implementing a growth moratorium include employment rate and decreased cash flow for the City as it would affect the collection of fees. Mr. Kirst stated that he reviewed a copy of the County tax sharing agreement and confirmed that the City was previously receiving 10% of the County's share of property tax; whereas, it now collects 20%. Mr. Kirst presented information from the League of California Cities (filed) regarding the Educational Revenue Augmentation Fund shift and how those figures are calculated. He further pointed out that the Mayor, during her tenure as a Planning Commissioner, voted "no" 98% of the time on growth-related projects, and voted "no" 95% of the time while on the City Council.

- Pat Patrick, President/CEO of the Lodi District Chamber of Commerce, stated that he represents 800 businesses in Lodi and 15,000 employees who elect a board of directors to represent them on issues, help them create a stronger local economy, and promote the community. The organization is opposed to such a moratorium. He believed that no growth was a myth and that a moratorium would begin a decline for the City. Without some residential growth, property taxes will stagnate and the City would be unable to cover the cost of doing business. Without commercial growth, sales taxes will decline. Lodi is in the middle of one of the fastest growing regions in California, and if it cannot attract consumers, those dollars will go elsewhere to support other communities. In 2003-04, Lodi was the only city in San Joaquin County that had a decrease in sales tax. In 2005, it had an increase due to the addition of Lowe's; however, that increase was the smallest of any city in San Joaquin County. The Chamber believes that a balance can be struck between economic growth and sustainable agriculture. Once property tax, sales tax, and jobs are cut, there is nothing left to provide economic buoyancy in the community. A moratorium would compromise the 600 jobs from the Blue Shield project and its promise of 1,600 future jobs.
- Dennis Sattler expressed his concern about the recent decisions made by this Council that have ended up in financial disasters, including those associated with the PCE/TCE clean up and the Electric Utility downgrading. The residents have been placed with the burden of paying for these financial mistakes. He believed it made sense to put the brakes on growth and update the General Plan. The size of the Reynolds Ranch and Delta College projects warrant a study on the lasting impact on the City and a thoroughly thought-out plan.
- Ann Cerney expressed support for a moratorium in order for the City to establish policies and to consider the entire picture, rather than each individual development, so that all developers receive equal treatment to Reynolds Ranch. She believed it was logical that the General Plan precede any action on developments and she encouraged Council to take the "time out" to establish procedures.
- Russ Munson stated that the City has had rules in place for as long as he can remember and the development community has abided by those rules. Council continues to review those policies in order for the community to grow and adapt to the conditions that exist within the City. The City Manager successfully negotiated the City's first development agreement with Reynolds Ranch, for which Council voted 3 to 2 in favor, which serves to protect the City and approve development fees that have not yet been established. A moratorium would put a stop to that. Mr. Munson expressed bewilderment that the Mayor spoke proudly of the 2% growth limit at the Greenbelt Task Force meeting, but is now taking the opposite approach. He expressed concern that putting a halt on growth until a plan is established would take years. The current plan calls for Planned Residential to the south and includes schools, parks, and traffic mitigation. He questioned what a moratorium would do for his commercial projects that have been in the planning stages for the last five years.
- Jasbir Gill expressed his shock that many of the Planning Commissioners were unfamiliar with the General Plan and that there has not been an update for 20 years. He hoped that the Council Members were appropriately educated on the General Plan so as to make well-informed decisions on behalf of this community; otherwise, he suggested that Council Members receive the necessary training.
- Michael Carouba stated that Lodi's growth problem is Stockton and he was pleased to see that positive efforts were being made by the Greenbelt Task Force; however, he believed that a moratorium was unnecessary. Mr. Carouba is a commercial real estate broker and is in the business of helping companies relocate or expand; unfortunately, Lodi does not have much in the way of infill. He believed that a moratorium would prevent the City from welcoming a major company, such as a Blue Shield-type employer, that would bring a great number of jobs to the City, and he felt that the Council should have the ability to judge each project on its own merits. The last

General Plan took four years to approve and he believed in this more litigious world today it would take much longer. He believed that to take a position that the City will not grow in commercial or residential in order to plan the area south of Harney Lane is not practical. There is a public process involved for individual developments, both at the Planning Commission and Council levels, and he reminded that Council has the opportunity to turn down a project due to inappropriate timing.

- Barbara Flockhart spoke in support of having a greenbelt between Lodi and Stockton and of increasing builders' fees to be more in line with the city of Tracy. She stated that many residents are unhappy with the three-bedroom system in calculating water rates, as well as the 38% water rate increase. Ms. Flockhart expressed concern about the \$1 million wasted every year on the WID water and about the proposed \$30 million project to bring the WID water to new homes. New development should pay for this. She suggested that if the Reynolds Ranch/Blue Shield project is approved, there should be an over crossing at Harney Lane.
- Dennis Bennett questioned how the Mayor arrived at the \$400,000 per acre cost for park land that she quoted earlier, to which Mayor Hitchcock responded that she received the information from local developers. Mr. Bennett stated that there has not been property in Lodi that has sold for \$400,000 an acre for any purpose recently for park land or residential development. A general plan is a living document that can be amended up to four times per year, and he believed that all of the property that has been proposed for possible development is within Lodi's General Plan. Land in Residential Reserve is held until it is rezoned for a particular residential zoning that is applied for and approved by the Planning Commission and Council. He stated that Lodi receives a higher rate of property tax today from new annexations than any time in recent years. Mr. Bennett disagreed with the comment made by Council Member Mounce that every third or fourth home on every block in Lodi is for sale. The housing market is extremely high and Lodi has an affordability problem, forcing young families to purchase homes in Stockton as it has less expensive housing projects. Lodi needs to focus on revenue generation by encouraging additional commercial and industrial opportunities in Lodi and increasing the employment and sales tax base; not stopping growth. If the development fees are not adequate, the City should adjust them appropriately through a nexus demonstrating the justification for the fee increase. He encouraged Council to not support a growth moratorium.
- Dennis Silber urged Council to vote in favor of a temporary development moratorium in order to allow Council and staff to carefully review its General Plan and ensure all currently proposed and future developments are in the best interest of Lodi for the long term. He expressed concern about the additional costs Lodi citizens might incur and believed the moratorium would provide staff time to examine how the City would pay for infrastructure and City services, as well as whether or not developer fees are sufficient.

Mayor Hitchcock agreed with the statements that developers are paying the required fees; however, those fees are insufficient. She expressed concern that the Growth Management Ordinance can be substituted by a development agreement without Council input. With impact fees, developers know up front what they will be paying, yet a development agreement is by negotiation and some may receive a better deal than others. Mayor Hitchcock stated that there are many cities that are land locked, as well as others that have urban growth boundaries, yet they continue to grow within and are not in decline. She did not consider herself to be a no-growth person and is very proud of being a part of the 2% growth cap; however, she was concerned that the Growth Management Ordinance and the priority areas were being replaced with development agreements, for which Council is not forming the policies. The area south of Harney Lane has not had a General Plan, comprehensive plan, or master EIR completed and it should not be piecemealed in with an expired General Plan. The Council has an ambitious plan to implement its new Plan in one year. She stated that she supports jobs and Blue Shield and would prefer that the developer sell the land to Blue Shield so that it could proceed, with the remaining development on hold until the completion of the General Plan.

Council Member Beckman requested the City Attorney to opine on the reasoning behind the four-fifths vote requirement for a growth moratorium, to which Mr. Schwabauer responded that the legislative intent may have been to address the number of challenges resulting in this type of Council action. The four-fifths vote requirement would make it more difficult to enact a moratorium, and he believed this was a compromise the building industry was willing to accept. Mr. Beckman added that he believed the significance of a four-fifths vote would indicate that a moratorium is an extreme measure to take as this action could jeopardize or harm the rights and property interests of others. He did not believe that Lodi was experiencing an extreme rate of growth that warranted the declaration of an emergency situation that the public welfare was in jeopardy and he stated that he would not support a moratorium.

Council Member Hansen stated that he was very familiar with and has a fair understanding of the General Plan, as does, he believed, all of the Council Members. He questioned if the use of a development agreement nullifies the Growth Management Ordinance and whether the Council could decide, with the use of a development agreement, to grow by more than 2%.

Mr. Schwabauer stated that Council-adopted ordinances have the power to change another ordinance; however, he believed that development agreements were not intended to make significant changes to the Growth Management Ordinance. Development agreements do not propose growth in an amount greater than that permitted by the Growth Management Ordinance; however, the one difference is the issue on how allocations are granted. The Growth Management Ordinance states that in years where there are not enough allocations, there will be an allocation process. Reynolds Ranch is proposing only to take low-density allocations; therefore, the allocation process was unnecessary as there were more than enough low-density allocations available.

Council Member Hansen stated that he was committed to the 2% growth cap and made assurances that he would not support any development agreement that included a higher growth level. He believed that the economy is the determining factor on how fast the City will grow. He recently met with an economist from Sacramento State University who has studied the issue of growth in California for over 20 years. He shared with Mr. Hansen that cities can control growth; however, they cannot stop it, and a moratorium would be devastating to this community. The economist cited Livermore as an example of a city that put a stop to growth, and after ten years the city had the worst facilities, crime, and traffic in the county. He further stated that land locked communities need an attraction to provide an infusion of money into the city, and the economist agreed that the Delta College satellite campus could be a draw for the City of Lodi, as would an increase in tourism. Mr. Hansen believed that the City's financial struggles have resulted in the slow growth rate as the City's three main funding streams (i.e. property tax, sales tax, and vehicle license fees) do not support City services. He was hopeful that the Community Facilities District concept would address this issue and that development would pay for the additional impact and cost on cities. Mr. Hansen expressed concern in delaying the decision on water percolation or treat and drink as it provides less opportunity for the City to pass those costs onto new development. Mr. Hansen believed there were serious consequences associated with a moratorium and stated he would not support the matter.

MOTION:

Mayor Pro Tempore Johnson made a motion, Beckman second, to not move forward with a growth moratorium.

DISCUSSION:

Mayor Hitchcock stated that the City may not feel the effects of growth tomorrow, but it would in the future once the proposed 4,000 homes were in place. She questioned if the City was superseding the Growth Management Ordinance by developing outside of the established priority areas, to which Mr. Schwabauer replied in the affirmative.

Council Member Mounce reported that she received information recently that the city of Stockton is number one in California on the number of foreclosures on new homes purchased in the last one to two years. She believed that a 45-day break to reassess and consider the direction of the City was reasonable and stated she would be supportive of a temporary growth moratorium.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, and Johnson

Noes: Council Members – Mounce and Mayor Hitchcock

Absent: Council Members – None

RECESS

At 10:46 p.m. Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 10:54 p.m.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Mayor Pro Tempore Johnson, Mounce second, unanimously voted to continue with the remainder of the meeting following the 11:00 p.m. hour.

K. REGULAR CALENDAR (Continued)

K-2 “Introduce ordinance amending Lodi Municipal Code Title 5 – Permits and Regulations – by adding Chapter 5.25, ‘Pedicabs’”

City Manager King reported that a pedicab is a bicycle with three or more wheels and a back seat used as a form of transportation. Staff was recently approached by an entrepreneur who wished to establish a pedicab business in Lodi. Upon review of the Lodi Municipal Code, it was determined that the closest regulation was the taxicab ordinance; however, there are inherent differences between taxicabs and pedicabs, and staff determined that an ordinance would need to be created to address this relatively new type of business. The City Attorney’s Office researched pedicab ordinances from a variety of cities; the proposed ordinance would require the operators to be fingerprinted and the vehicles to be inspected by the Lodi Police Department. Mr. King believed pedicabs would be a major benefit to the downtown area and provide a fun mode of transportation for those attending various events in the area.

In response to Council Member Mounce, Mr. King stated that pedicabs would be required to have seatbelts.

PUBLIC COMMENTS:

- Dennis Silvia, pedicab entrepreneur, stated that the drivers of the pedicab would also be required to follow the same rules as a bicycle rider, including wearing a helmet. He believed the pedicabs would be a unique addition to downtown; however, he did not want to specifically limit the operation to only that location and envisioned being at Hutchins Street Square, Wine and Roses, and other heavily populated attractions.

In response to Council Member Hansen, Mr. Silvia stated that presently he has one pedicab and plans to introduce the business downtown to gauge the reaction from the public. The business would then grow according to the demand. Council Member Hansen believed that the pedicabs would receive a great reaction from the public, particularly at the downtown events, and he expressed support for the ordinance.

In response to Mayor Hitchcock, Mr. Silvia stated that the hope is to be ready for the Lodi Grape Festival weekend. Initially, the cost will be up to the rider in the form of tips, after which they will arrive at a fee based on distance peddled.



Council Member Mounce commended the Silvia's on having an idea and following through by ensuring they had the appropriate permits and licenses.

MOTION:

Mayor Pro Tempore Johnson made a motion, Beckman second, to introduce Ordinance No. 1783 amending Lodi Municipal Code Title 5 – Permits and Regulations – by adding Chapter 5.25, “Pedicabs.”

DISCUSSION:

In response to Mayor Hitchcock, Deputy City Attorney Magdich stated that she researched ordinances from the cities of San Francisco, Long Beach, Santa Barbara, San Diego, Santa Monica, San Luis Obispo, and Santa Cruz.

VOTE:

The above motion carried by a unanimous vote.

- K-3 “Adopt resolution approving an alternative retirement system for part-time, seasonal, and temporary employees”

Deputy City Manager Krueger reported that the Public Agency Retirement System (PARS) is an alternative to the current retirement system (i.e. Social Security) for part-time employees, which meets federal retirement plan requirements. This alternative program is in the Internal Revenue Code as a defined contribution plan, which is beneficial to the employees as the contributions are retained for the benefit of the employees until such time that they retire or leave employment. The City currently matches the contribution that the employees make into the Social Security system for a total combined contribution of 12.4%. PARS would be a reduction from the City's share that it pays into the Social Security system, and the recommendation is that the employees assume the entire portion of the 7.5% contribution, which would result in a zero percent contribution from the City and a savings of \$60,000 without a reduction in services associated with the implementation of the plan. There are three options for transitioning into the PARS system: 1) shift all part-time employees across the board immediately into the system; 2) offer employees a choice as to which plan they would like to participate in; and 3) offer those employees who have reached 30 quarters or more in the Social Security system the option of continuing with Social Security until they are vested at 40 quarters, at which time they would be transitioned into the PARS system. Staff is recommending the third option. All new part-time employees would be enrolled in the PARS system immediately. Currently, there are four employees that have 30 or more quarters; three employees in the range of 26 to 30 quarters, and the remaining employees have less than 26 quarters. This information only takes into account employment at the City of Lodi; it does not include previous employment.

Council Member Hansen expressed concern on setting the threshold at 30 quarters and suggested a better threshold would be 20 quarters. He believed that part-time employees provided a great service and benefit to the City of Lodi and he wanted to ensure they were treated fairly.

Mr. Krueger stated that the greater number of employees who have the option to choose which system to participate in would reduce the amount of savings to the City.

MOTION / VOTE:

The City Council, on motion of Council Member Mounce, Hansen second, unanimously adopted Resolution No. 2006-161 taking the following actions with regard to an alternative retirement system for part-time, seasonal, and temporary employees, and further directed

that the threshold be amended from 30 quarters to 20 quarters for those eligible to opt for continuing with Social Security until vested or changing to the PARS system:

- Approved participation in the Public Agency Retirement System (PARS) as an alternative retirement plan in lieu of Social Security for part-time, seasonal, and temporary employees effective the first full pay period in September 2006;
- Approved the funding and contribution split whereby the City will pay administration costs and employees pay a 7.5% contribution rate; and
- Authorized the City Manager to sign the agreement for Administrative Services.

K-4 “Approve six-month budget for M&P Investments, Hartford, and Envision cases”

City Attorney Schwabauer presented the proposed budget for the next six months in the amount of \$1.94 million. Mr. Schwabauer reported that the last six month budget was \$1.96 million; the actual amount spent was significantly lower and he anticipated that the same would hold true for the new budget year. Mr. Schwabauer stated that the purpose of the budget was to provide a tool for Council to track what was being spent before it occurred.

MOTION / VOTE:

The City Council, on motion of Council Member Mounce, Beckman second, unanimously approved the six-month budget for the M&P Investments, Hartford, and Envision cases, as detailed below:

M&P Investments	\$	742,500
Hartford	\$	835,000
Envision	\$	365,000
<b>Total</b>		<b>\$1,942,500.00</b>

K-5 “Approve expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation and various other cases being handled by outside counsel (\$177,660.19)”

City Attorney Schwabauer reviewed expenses incurred by outside counsel/consultants as was outlined in the staff report.

MOTION / VOTE:

The City Council, on motion of Council Member Beckman, Mounce second, unanimously approved the expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation and various other cases being handled by outside counsel in the amount of \$177,660.19, and as detailed below:

**Folger Levin & Kahn - Invoices Distribution**

Matter No.	Invoice No.	Date	Description	Water Acct. Total Amount
8001	96372	6/30/2006	General Advice/Environmental Issues	470.00
8002	96378	6/30/2006	People v. M&P Investments	58,208.16 (2,935.00)
8003	96377	6/30/2006	Hartford Insurance Coverage Litigation	106,965.13 (900.00)
8008	96373	6/30/2006	City of Lodi v. Envision Law Group	5,742.30
	13486	6/30/2006	Keith O'Brien/PES Environmental, Inc.	1,012.50
	6235	5/31/2006	Peter Krasnoff, West Environmental Service	2,440.00
				<u>171,003.09</u>

**Kronick Moskowitz Tiedemann & Girard - Invoices Distribution**

<u>Matter No.</u>	<u>Invoice No.</u>	<u>Date</u>	<u>Description</u>	<u>Total</u>	<u>Distribution</u>
				<u>Amount</u>	<u>100351.732 Water Acct.</u>
11233.027	226714	07/25/06	Citizens for Open Govt. v. City of Lodi	2,647.88	2,647.88
11233.029	226714	07/25/06	AT&T v. City of Lodi	281.55	281.55
11233.031	226714	07/25/06	Line of Credit Opinion 2006	3,169.91	3,169.91
				<u>6,099.34</u>	<u>6,099.34</u> <u>-</u>

**JAMS**

			<u>Distribution/Water Account</u>
1170617-110	6/30/2006	JAMS Mediation Service	\$ 359.87
1180071-110	7/31/2006	JAMS Mediation Service	<u>\$ 197.89</u>
			\$ 557.76

L. ORDINANCES

None.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:27 p.m.

ATTEST:

Jennifer M. Perrin  
Interim City Clerk

**CITY OF LODI  
INFORMAL INFORMATIONAL MEETING  
"SHIRTSLEEVE" SESSION  
CARNEGIE FORUM, 305 WEST PINE STREET  
TUESDAY, SEPTEMBER 19, 2006**

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, September 19, 2006, commencing at 7:05 a.m.

**A. ROLL CALL**

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock  
Absent: Council Members – None  
Also Present: City Manager King, Deputy City Attorney Magdich, and Deputy City Clerk Taylor

**B. TOPIC(S)**

**B-1 "Presentation regarding playground equipment safety standards"**

Parks Superintendent, Steve Dutra, shared that public playgrounds offer a great outlet for physical, emotional, social, and intellectual development of children at play, but kids play hard and can become injured. Focusing on safety in designing and installing equipment in City parks, he shared a number of statistics and mandated requirements with regard to public playgrounds in a PowerPoint presentation (filed). He stated that he and Parks Mechanic Larry Moore are Certified Playground Safety Inspectors, having completed training, extensive reading, an examination, and continued education for re-certification. He stated that during the past two decades, the US Consumer Product Safety Commission (CPSC) statistics indicate a dramatic increase in playground-related injuries, and at least 70% of these injuries occur on public playgrounds. Entrapments, falls to the surface, and equipment maintenance are factors that must be monitored as they are the responsibility of the equipment owner. Guidelines are provided with regard to age appropriateness of equipment and critical height, which considers not only the distance a child may fall but also the material on the surface located under and around the equipment. As a government agency, the City is mandated by the Health and Safety Code to comply with sections of the Handbook for Public Playground Safety #325, which presents safety information for public playground equipment, and the Standard Consumer Safety Product Specifications for the playground equipment for public use.

The American Society for Testing and Materials (ASTM) outlines nationally recognized standards for consumer safety product performance specifications for playground equipment for public use. Preventive maintenance is specified as planned programs of inspections and maintenance intended to keep equipment functioning properly and to forestall equipment failures. Public playground equipment must be designed and constructed to reduce the risk of accidents related to head and neck entrapments. Slides that are less than 48 inches tall must have an exit region height no greater than 11 inches from the protected surface; however, slides taller than 48 inches require that the exit region height be between 7 and 15 inches above the protected surface. The City is required to maintain detailed records regarding installation, inspections, maintenance, and repairs to equipment and use areas as mandated by law.

Larry Moore, Parks Division Mechanic, stated that he is responsible for the overall maintenance and inspection of 22 playground structures at 17 community locations. The Parks Division has an established playground safety program, which was developed by Mr. Dutra in 2002 based on the CPSC and ASTM guidelines. Program goals include providing quality facilities, preventing injuries, and protecting the City investment. The program calls for daily, weekly, monthly, and annual inspections. Inspections are done daily and weekly by park maintenance staff looking for inappropriate materials, vandalism, graffiti, and broken equipment. Play areas are cleaned, weeded, painted, and ground cover is raked as needed. Monthly inspections are completed by a certified playground safety inspector that walks the area, climbs equipment, looks for loose and missing hardware, checks the

protective surfacing depth, and completes preventive maintenance. Annual inspections are based on monthly inspections and include determining level of use, setting goals, preparing the budget, comparing products, and scheduling maintenance. He shared that while the City uses engineered wood fiber for surface cover, it has also used poured-in-place surfaces which perform well.

Mr. Dutra shared that 11 community parks meet current standards and 6 parks need to be addressed on some level. Emerson Park has been refurbished to meet codes based on the hard work of staff and the ability to utilize Community Development Block Grant (CDBG) funding. The original structure had a play area and swings in close proximity located near the street intersection; however, a swing bay requires a fall zone of 32 feet in clearance. The new design at Emerson Park features a swing set area separate from the play structure to meet new design criteria based on safety guidelines and laws.

Mayor Pro Tempore Johnson stated that many parks were refurbished using CDBG funds and asked where the City will get the money to replace structures that still need to be replaced but are not a part of the CDBG target area. Mr. Dutra stated that only Blakely, Hale, and Van Buskirk Parks are in the target area and that these funds can be used for refurbishing Van Buskirk Park; however, Beckman Park is outside the target area but needs to be refurbished next based on inspections. State and federal grants, community organizations, and donations can offer funding opportunities to secure approximately \$200,000 each for the remaining parks requiring completion. He shared that, while Beckman Park also needs a restroom replacement and that every effort would be made to complete these projects together, there are other projects higher on the list than the Beckman bathroom replacement at this time. He notified Council that Beckman Park playground area will be taken out of service due to safety concerns and a temporary fence will be installed to ensure public safety until the work can be completed.

City Manager King shared that, until recently, playground equipment designed to CPSC guidelines allowed cities to defend their efforts toward liability compliance by purchasing approved equipment. Everything changed to a mandated requirement when relatively new pieces of equipment did not comply with the standards of entrapment, requiring cities to make a risk management choice. Over the last several years many cities have used per capita money to replace equipment; however, the money can only be used for equipment, not park maintenance, and many times projects may require increasing work and equipment to spend more money in order to be eligible for grant funds.

Mayor Pro Tempore Johnson stated that there are minimum standards in place, and the City appears to have exceeded them in placing pour-in-place surfaces instead of wood fibers. He asked if the City is placing itself into a risk management corner by spending more than necessary in protecting users of the equipment by using pour-in-place surfaces when other communities are still using wood chips. Deputy City Attorney Magdich replied that as long as the city is meeting the standards of the Health and Safety Code and the California law requirements, it is acceptable to use either or both surfaces as determined appropriate by safety inspectors and park designers.

Mr. King stated that, while the poured-in-place surface is still being reviewed and tested for its long-term durability, replacement compound is available for repairs and pour-in versus wood chips which need raking on a consistent basis, which is a very labor intensive process. Mr. Dutra shared that Lawrence Park was the first park to receive poured-in-place surfacing through a recycled tire grant for \$25,000. He stated that it costs \$12.25 per square foot, must be sub-graded and compacted, and seal coated every five years, which is why the parks division has a supply of patching materials on hand filled with additional product.

Mr. Dutra shared that Candy Cane Park has been maintained in part by the generosity of the Soroptimist Club and that perhaps funding can continue in the future on that and other parks. Lodi Lake Park contains two structures and the Kiwanis Club and other area

organizations have provided support of parks projects – staff will continue to explore and entertain these funding options. The Lodi Lake Park (north) was completed in the late 1980s and the south playground was replaced in the late 1990s. Van Buskirk Park was modified in the late 1990s with separate areas for the play area and a swing. Blakely Park was considered sound, solid, and without rust; however, entrapments were discovered making the equipment a safety hazard. He explained that an entrapment is any opening between 3.5 inches and 9 inches, which could provide a potential hazard for a child's head or neck.

Mayor Hitchcock stated that the repairs and upgrades presented a pattern in replacement approximately every ten years and asked about the comparison of public park equipment versus that used on school campuses, which appear to have little repair or replacement. Mr. King shared that he believed it was a risk management decision in which a policy decision is made to take the calculated risk that no injuries will occur. The alternative may be to close or tear down equipment and haul it away due to a lack of funding, which could have more negative repercussions in the community than leaving it there and hoping no claims are filed.

Mayor Pro Tempore Johnson remarked that at one time the City attempted to help the school district maintain its play areas when Parks Division target areas were much larger.

Mr. Dutra summarized that seven locations and eight structures need replacement at an approximate cost of \$2 million, or \$200,000 per project. In 1999, then Governor Davis signed Assembly Bill 1055 requiring all agencies to have their play structures audited by a certified inspector, and documentation has been retained to indicate upgrades and replacement. The initial audit identifies the play components existing in the play area, their present condition, and how they measure against current laws and guidelines. It also details the layout, design, surrounding environment, handicap accessibility, and protective surfacing. Mr. Moore will be charged with determining if play structures are in compliance based on current standards, and results of the audit will be provided to Council for information in making future decisions.

In response to Mayor Hitchcock, Mr. Dutra explained that the standards were originally drafted in the late 1970s by a group of architects, play equipment manufacturing representatives, and parks professionals. Based on their expertise and field experience, the group provided feedback to the CPSC, which developed the standards for the playgrounds, and since then the California Health and Safety Code has adopted laws based on these guidelines as criteria for the standards.

Mr. King stated that as society has evolved, accidents no longer occur - someone is at fault. As a result, public agencies determined that a standard was needed and guidelines were developed for playground safety maintenance to include inspections to defend against liability claims. The California Parks and Recreation Society and some playground equipment manufacturers advocated that the standard be moved to a mandatory requirement and that inspections be completed by trained and certified inspectors. The City can do a better job in looking at both preventive maintenance and funding for replacement to replace things on a regular basis because things wear down and standards change. Staff takes seriously its obligation to provide safe equipment for children to play on while complying with a reasonable plan for supporting policy makers in preparing for maintenance and replacement of playground equipment and facilities.

Deputy City Attorney Magdich shared that there is a balance between risk and cost, stating that only one park playground-related claim was filed in the past year for a broken arm, which occurred at Peterson Park (east), which is a park that is in complete compliance.

**C. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS**

None.

*Continued September 19, 2006*

**D. ADJOURNMENT**

No action was taken by the City Council. The meeting was adjourned at 8:04 a.m.

ATTEST:

Jacqueline L. Taylor  
Deputy City Clerk